



**Michigan Supreme Court**  
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**Friend of the Court Bureau**  
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April 21, 2003

**ADM 2003-22: 3**  
**SHARED ECONOMIC RESPONSIBILITY**  
**RETROACTIVE CLARIFICATION**

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Comments on these proposals may be sent in writing or electronically by July 1, 2003, to [MCSF@courts.mi.gov](mailto:MCSF@courts.mi.gov), or to the State Court Administrative Office, P.O. Box 30048, Lansing, MI 48909, attn: Friend of the Court Bureau. When filing a comment, please include specific references to the recommendation number (e.g. ADM 2003-22-1) and section to which your comments pertain. Your comments and the comments of others will be posted at <http://www.courts.mi.gov/scao/services/focb/mcsf.htm>.

This matter will be considered by the Supreme Court at a public hearing on June 19, 2003. The schedule, agendas, and instructions for reserving time to speak at public hearings are posted on the Court's website, <http://www.courts.michigan.gov/supremecourt>.

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**Recommended Change:**

Clarify when the shared economic responsibility formula applies. Allow application in cases with significant changes in circumstances.

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**Manual Text Change:**

**3.05 Shared Economic Responsibility**

- 3.05(D) The ~~economic sharing~~ shared economic responsibility formula should ~~only~~ be applied to ~~support orders entered concurrent with an initial custody/parenting time determinations and or to modifications of custody/parenting time based upon changed circumstances justifying modification. It shall cannot be retroactively applied to existing support orders in a manner inconsistent with MCL 552.603(2).~~

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**Rationale:**

“A change in circumstances,” is the usual standard for modifying orders related to support, parenting time, or custody. According to MCL 552.17, the court may revise or alter the order “. . . as the circumstances of the parents, and the benefit of the children require.”

The manual’s current language provides “The economic sharing formula should only be applied to support orders entered concurrent with an initial custody/parenting time determination or to modifications of custody/parenting time based upon changed circumstances. It shall not be retroactively applied to existing orders” has been interpreted by some to mean that the SER calculation cannot be applied prospectively to a case if it was not used in the original order, despite changes in the amount of parenting time or other significant changes of circumstances.

So in cases where a significant change in circumstance has occurred, the appropriate formula calculation (shared economic responsibility formula in cases with over 128 overnights) should not be applied.

Instead of interpreting “retroactive” as barring its use in most cases and not wanting the shared economic responsibility formula used as an adjustment if parenting time was exercised, the committee directly references “retroactive” as the time following service of the other party.

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**Anticipated Effect:**

Application of the SER calculation in all cases where a sufficient change has occurred to warrant modification, and not limited to cases where a custody or parenting time order is being entered or modified. The committee wanted this change to effect just cases with changed circumstances, and did not want the manual change, itself, to be a change warranting modification.

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**Issues and Discussion:**

The Friend of the Court Bureau Advisory Committee adopted a clarification of the shared economic responsibility provision’s to a case in which it was not initially applied.

The committee recommends that the first paragraph of Section IV B Shared Economic Responsibility from the Formula (2001 CSF Manual) be modified to:

“The shared economic formula should only be used if it can be determined from the specific terms of the custody/parenting time order that the children will be with that parent for at least the 128 overnight threshold. The economic sharing formula applies to support orders entered concurrent with a custody/parenting time determination or modification of custody/parenting time based upon changed circumstances, and not retroactively applied to existing support orders in a manner inconsistent with MCL 552.603(2).”

The advisory committee was very definite that SER should apply to cases where there has been a change in circumstances. It did not want this change and the change lowering the threshold to 52 overnights to open all cases to modification. It wanted this change to affect just those cases with changed circumstances, and did not want the manual change to be a change warranting modification.

FOCB Comment: In order to limit the number of cases qualifying for modification, the advisory committee did not change the language referencing orders entered concurrent with custody/parenting time determinations or modifications. This is contrary to the result the committee desired – to allow modification of support orders when circumstances change and to have the formula applied (e.g., reduction of income without change in parenting time order).

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**References:**

MCL 552.17. The court may revise or alter the order “. . . as the circumstances of the parents, and the benefit of the children require.”

MCL 552.603(2). A support order is a judgment “with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification. Retroactive modification of a support order is permissible for the period during which there is pending a petition for modification, but only from the date that notice of the petition was given to [the other party].”

A trial court may modify a child support order upon a showing of a change in circumstances justifying modification. *Edwards v Edwards*, 192 Mich App 559 (1992).

A substantial change in the amount of child support recommended in a new friend of the court report [not a new formula manual] may constitute a change in circumstances that justifies modification. *Calley v Calley*, 197 Mich App 380 (1992).

A change in the amount of support calculated under the child support guidelines in the intervening years may be sufficient to justify modification. *Calley* does not mean that a change in the guideline amounts is a mandatory reason to modify support. The trial court must consider all the facts and circumstances claimed, and determine whether the change is sufficient to warrant modification of the order. *Sharp v. Talsma*, 202 Mich App 262 (1993).